APPEAL NO. 040944
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 26, 2004. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a work related, although not compensable, repetitive trauma injury; that the date of injury (DOI) is _____; and that the appellant/cross-respondent (carrier) is relieved of liability because the claimant, without good cause, failed to timely report his injury to his employer.

The carrier appeals the determination that the claimant sustained a work-related injury citing court cases and various carpal tunnel syndrome (CTS) studies contending that CTS is an ordinary disease of life. The claimant appeals the determinations that the claimant does not have right cubital tunnel syndrome, the DOI, and that the claimant failed to timely notify the employer of the claimed injury. Both parties respond to the other's appeal, urging affirmance on the issues on which they prevailed.

DECISION

Affirmed.

The claimant was a 26 year employee, the last year or so of which he was a circuit design specialist. The claimant testified about his duties typing, keyboarding, and doing data entry. The claimant testified that he began to have problems with his right hand (tingling, numb, burning sensation) in _____, and that he "kind of felt it may be the typing" that was the cause of his problems. The claimant went to his primary care physician, who considered the claimant's condition as work related on April 9, 2003. The claimant was referred to another doctor in an office note dated April 18, 2003. The parties at the CCH seemed to agree that the claimed injury was first reported to the employer on April 29, 2003 (see pages 35 and 36 of the transcript), however, on appeal, the claimant asserts the injury was reported on April 24, 2003.

At the CCH there was considerable discussion whether CTS was an ordinary disease of life or an occupational disease. *See* Section 401.011(34) for the statutory definition of occupational disease which includes a repetitive trauma injury as defined in Section 401.011(36). The hearing officer, in his discussion regarding CTS, and citing an Appeals Panel decision, comments that CTS "If not an ordinary disease of life, it must be work related." We suggest that the question of whether CTS is compensable is not an absolute "always or never work related" but rather is fact specific depending on the circumstances of the case, preexisting risk factors, and the amount and type of work done, etc.

Regarding the injury determination, the hearing officer discussed the medical evidence and commented on how he reached his conclusion. On appeal, the claimant

contends that the hearing officer "placed too much emphasis on the nerve conduction studies" and did not consider other medical records. We have long cited Section 410.165(a) that makes the hearing officer the sole judge of the weight and credibility of the evidence and that is equally true of medical evidence. (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer's determinations on this issue are supported by the evidence.

Regarding the DOI issue, Sections 408.007 and 409.001(a)(2) provide that the DOI for an occupational disease "is the date on which the employee knew or should have known that the disease may be related to the employment" (emphasis added.) The hearing officer determined the DOI was _____, when the claimant began having problems and thought it might be due to his typing. As the hearing officer states, the DOI need not be as late as a definitive diagnosis or an opinion of causation from a medical provider. The hearing officer's determination of the DOI is supported by sufficient evidence. In that we are affirming the hearing officer's determination of the DOI, and no good cause being shown, the claimant did not timely report his injury to the employer pursuant to Section 409.001(a) (regardless of whether the injury was reported on April 24 or April 29, 2003), and the carrier is relieved of liability pursuant to Section 409.002.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not erroneous as a matter of law and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge